SERVED: August 13, 2002

NTSB Order No. EA-4990

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 5th day of August, 2002

JANE F. GARVEY, Administrator, Federal Aviation Administration, Complainant, v. MANUEL S. DIAZ, Respondent.	Docket SE-16168

OPINION AND ORDER

Respondent, by counsel, has appealed from the written initial decision of Administrative Law Judge Patrick J. Geraghty, issued on June 21, 2001.[1] The law judge sustained the Administrator's revocation of respondent's mechanic certificate for his alleged violation of 14 C.F.R. 43.12(a) of the Federal Aviation Regulations, 14 C.F.R. Part 43.[2] We deny the appeal, as

[1] A copy of the law judge's June 21 decision is attached.

[2] Section 43.12(a)(1), as charged here, prohibits intentionally false entries in any record or report that is required to be

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well as respondent's motion to supplement his brief by way of a reply to the Administrator's reply, and his request for oral argument.

The Administrator's order was filed as the complaint on December 18, 2000. The Board notified respondent that it had accepted the complaint by letter dated December 21st. In that "case management" letter, respondent was directed to file an answer within 20 days of service of the complaint. Specifically, the letter advised (emphasis in original):

> Your attention is particularly directed to Section 821.31(c), which requires that Respondent file an answer to the FAA's complaint within 20 days of service of the complaint. * * * Failure to file an answer may be deemed an admission of the truth of the allegations in the complaint. Therefore: THE FILING OF A TIMELY ANSWER IS A VERY IMPORTANT STEP IN THE PROTECTION OF RESPONDENT'S APPEAL RIGHTS.

Respondent filed no answer. Pursuant to 49 C.F.R. 821.18, he filed a motion for a more definite statement which, our rules specifically provide at Section 821.14(f), acts to stay the requirement to file an answer. The law judge denied that motion on January 25, 2001, in an "Order to File Answer" that directed respondent to comply within 10 days.

Respondent filed no answer. Instead, on the day the answer

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made, kept, or used to show compliance with any requirement under Part 43. The Administrator alleged in her complaint that, in connection with a heavy maintenance "C" check, respondent, an inspection supervisor at the Oakland maintenance facility of Alaska Airlines, applied his inspection stamp to a Post Maintenance Final Run Checklist and made entries indicating that certain work had been completed when he knew that the work had not actually been done.

was due, he filed a motion to stay the proceedings or to stay discovery. Only after the Administrator filed a motion for judgment on the pleadings based on the respondent's failure to file an answer did he file one, 16 days late. He later filed a motion to accept the late answer, to which the Administrator replied in opposition. The law judge rejected the answer as untimely and denied the request for stay. He also denied the motion to late file and granted the Administrator's motion for judgment on the pleadings, stating that any hearing would be limited to sanction. The Administrator then filed a motion for summary judgment, requesting the law judge to impose the sanction of revocation without holding a hearing. The law judge granted that motion. Respondent contends that all these actions deprived him of due process and misapplied Board precedent. We disagree.

We have long held that our procedural rules should be strictly applied. "[U]ndue laxity in the enforcement of our Rules of Practice will hinder the administration of justice in the long view by giving one party an unfair advantage over the other, and by removing the essential element of predictability from Board proceedings." Administrator v. Hayes, 1 NTSB 2016, 2017 (1972). See also Administrator v. Lilles, 2 NTSB 470, 471 (1973) ("An administrative process would be defeated by an endless opening and reopening of records where a respondent has not asserted his rights to present his case, when it has been shown that he was given ample opportunity to do so.").

Our rules specifically state when they act automatically to

stay other deadlines. Section 821.14(f) is entitled *Effect of pendency of deadlines,* and provides that the filing or pendency of motions does not act to stay deadlines except in the case of motions to dismiss and to obtain a more definite statement. Parties are chargeable with knowledge of our rules. See, e.g., Administrator v. Hamilton, NTSB Order No. EA-3496 (1992) (counsel expected to know and abide by deadlines), and Administrator v. Sanderson, infra (lack of counsel does not excuse failure to follow rules).

We have consistently ruled that failure timely to file an answer, in the face of our clear rules and the letter from the case manager stressing the importance of filing a timely answer, shall act to limit any hearing to the matter of sanction. See, e.g., Administrator v. Blaesing, 7 NTSB 1075 (1991); Administrator v. Sanderson, 6 NTSB 748 (1988); Administrator v. Taylor, 4 NTSB 1701 (1984); Administrator v. Mommsen, 4 NTSB 830 (1983). Accordingly, contrary to respondent's claim of error #2, it is clear that respondent's motion for stay did not toll the time for filing his answer. Further, the law judge did not err when he rejected the late answer (respondent's claim of error #1).

Respondent argues that the law judge applied a good cause test, when he should have applied a more lenient prejudice test in deciding whether to accept the late answer. Respondent is mistaken. Administrator v. Heidenreich, NTSB Order No. EA-4577 (1997). See also Administrator v. Browning, 6 NTSB 500 (1998),

where the failure to file a timely answer was due to counsel's interpretive error, an error the Board found not to constitute good cause in light of the clear instructions in the case manager's letter and our rules. Our procedural rule is clear on its face and has been consistently and strictly applied. See, e.g., Blaesing, Mommsen, Browning, Sanderson, Taylor, and Administrator v. Sutton, NTSB Order No. EA-3434 (1991).

We review the law judge's decision under a traditional abuse of discretion standard. As the law judge followed clear and long-standing precedent in this matter, we find no abuse of discretion.[3] Nor are we persuaded -- given the clarity of our rules and the instructions given respondent -- by his claim that he was entitled to rely on Federal rule precedent.[4]

Administrator v. Grant, NTSB Order No. EA-3919 (1993), cited by respondent for the proposition that the Board applies a prejudice test to late-filed answers, was decided in the specific context of the Equal Access to Justice Act (EAJA), and our special implementing rules. In Grant, where the answer was not critical to the process and was permissive under our rules (see 49 C.F.R. 826.32), the prejudice standard was applied in deciding

[3] We also disagree with respondent's contention that, even applying a good cause standard, the answer should be accepted. Counsel's ignorance or misreading of our rules does not constitute good cause. Given Section 821.14(f)'s clear statement to the contrary, counsel had no reason to believe that a motion to stay would automatically toll other deadlines.

[4] If counsel were in doubt over how to proceed, he should have sought clarification from the Board. There is no indication here that he did so.

whether to accept a late answer. An answer to an EAJA application is far different from an answer to the complaint, which the case management letter directs be filed or risk having the allegations assumed true.

We also find no merit in respondent's claim that the law judge erred in granting the Administrator's motion for summary judgment. Respondent was charged with intentional falsification. One instance of intentional falsification supports revocation. Administrator v. Rea, NTSB Order No. EA-3467 (1991) (intentional falsification of application is a serious offense which in virtually all cases the Administrator imposes and the Board affirms revocation), citing Administrator v. Cassis, 4 NTSB 555 (1982), reconsideration denied, 4 NTSB 562 (1983), aff'd, Cassis v. Helms, Admr., FAA, et al., 737 F.2d 545 (6th Cir. 1984). The availability of revocation as the sanction for intentional falsification is noted in the Administrator's written sanction guidelines. Nothing in this case warrants our ignoring those guidelines. 49 U.S.C. 44709. The Administrator having sought the sanction of revocation in this intentional falsification case, we are obliged to affirm. A hearing on mitigation would be pointless.

Finally, respondent argues that he was denied due process and the opportunity to be heard on the merits. The lack of a hearing on the merits was due solely to counsel's failure to abide by the Board's clear rules. That is not a denial of process attributable to the Board.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's motions and appeal are denied; and

2. The revocation of respondent's certificate shall begin 30 days after the service date indicated on this opinion and order.[5]

BLAKEY*, Chairman, CARMODY, Vice Chairman, and HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

*Chairman Blakey voted on this opinion and order on June 11, 2002, prior to her nomination to be Administrator of the FAA.

[5] For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. 61.19(f).